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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IRIS M. MAITER, ET AL.,
Petitioners,

vs.

CHICAGO BOARD OF EDUCATION, ET AL., and DISTRICT # 21 PARENT EDUCATION COUNCIL, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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QUESTIONS PRESENTED

1. Whether the Chicago Board of Education's use of local school council "nominating committees" in the selection of principals, where such committees use race as a criterion to exclude qualified persons from the position, is a violation of equal protection rights under the Fourteenth Amendment.

2. Whether it is a denial of due process for the Illinois Supreme Court to have foreclosed petitioners' rights to trial on the merits of their claim that they were denied a position as principal because of racial discrimination.

3. Whether the retroactive application of Section 34-8.2 of the Illinois School Code, which was held to abolish rank order appointments of principals and exhaustion of eligibility lists in chronological order, deprives the petitioners of due process, where they had been placed on eligibility lists and appointments had been made in rank order from said lists since the 1917 enactment of Sections 34-83 and 34-84, which have remained unchanged since 1917.

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The petitioners, Iris M. Maiter, Sylvia Asllani, Joseph M. Bechina, Ruth Goldrich, Alma M. Heck, John Jones, Bernard Karlin, Norman Kremen, Winifred M. Szpara Markowski, Dorothea Moderhock, Judith L. Baker, Frederick Barth, Eleanor Brazier, James Bernero, Marilyn Bessler, Fred W. Delaney, June C. Dudeck, Marjorie A. Dwy, Elizabeth A. Evan, Edith B. Edington, Samuel L. Dolnick, James Ahern, Samuel Altshuler, Jeannette Anderson, Louis Asher, James Bailey, Sonja Becvar, Jewel Beifuss, Dorothy Berg, and Bruce Berndt, respectfully pray that a writ of certiorari be issued to review the judgment and opinion of the Supreme Court of the State of Illinois entered in this proceeding on October 17, 1980.

OPINION BELOW

The opinion of the Supreme Court of the State of Illinois, not yet reported, appears in the Appendix hereto. The opinion of the Appellate Court of the State of Illinois, First Judicial District, is reported at 77 Ill. App. 3d 389, 395 N. E. 2d 1162.

JURISDICTION

The judgment of the Supreme Court of the State of Illinois was entered on October 17, 1980. A petition for rehearing was denied on November 26, 1980, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U. S. C. § 1257(3).

STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV, Section 1 (in pertinent part):

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ill. Rev. Stat., 1975 Ch. 122, Sec. 34-83:

> "A board of 3 examiners shall examine all applicants required to hold certificates to teach and the board of education shall issue gratuitously to those who pass a required test of character, scholarship and general fitness, such certificates to teach as they are found entitled to receive. The board of examiners shall consist of the general superintendent of schools and 2 persons approved and appointed by the board of education upon the nomination of the general superintendent of schools. The board

of examiners shall hold such examinations as the board of education may prescribe, upon the recommendation of the general superintendent of schools and shall prepare all necessary eligible lists, which shall be kept in the office of the general superintendent of schools and be open to public inspection. Members of the board of examiners shall hold office for a term of 2 years."

Ill. Rev. Stat., 1975, Ch. 122, Sec. 34-84:

"*Appointments and promotions of teachers, principals and other educational employees shall be made for merit only,* and after satisfactory service for a probationary period of 3 years (during which period the board may dismiss or discharge any such probationary employee upon the recommendation, accompanied by the written reasons therefor, of the general superintendent of schools) appointments of teachers and principals shall become permanent, subject to: (1) termination by compulsory retirement at the age of 65 years; (2) the rules of the board concerning conduct and efficiency; and (3) removal for cause in the manner provided by Section 34-85.

"When any teacher or principal who has been promoted to the position of assistant or district superintendent or a member of the board of examiners is relieved of the duties of such position, he shall be reinstated in the position from which he was promoted.

" 'Teachers and principals' as used in this article means all members of the teaching force except the general superintendent of schools, assistant and district superintendents and members of the board of examiners." (Emphasis added.)

Ill. Rev. Stat., 1979, Ch. 122, § 34-8.2:

"A. Before the general superintendent shall recommend or the board shall vote on the appointment of a principal, the general superintendent and board may obtain the nomination of a person or persons to fill the position of principal by a local nominating committee.

"B. A local nominating committee, when authorized by board rules and regulations, may consider, interview and nominate only those persons for the position of principal who appear on the appropriate eligibility list prepared by the board of examiners or those principals who consent to be considered for a transfer. The recommendations of the local nominating committee shall not discriminate against any person based upon race, color, creed, national ancestry, sex, ethnic heritage or religious beliefs.

"C. The board may adopt rules and regulations regarding the formation of and procedures to be followed by local nominating committees; these rules and regulations shall assure that at least 60% of the members of each committee shall be parents or guardians of children in the affected school.

Added by P. A. 80-879, § 1, eff. Oct. 1, 1977."

STATEMENT OF THE CASE

On June 12, 1975, the petitioners herein brought a declaratory judgment action in the Circuit Court of Cook County, Illinois, for a finding that the rules and procedures established and employed by the Chicago Board of Education[1] for the appointment and promotion of principals were in violation of Section 34-84 of the School Code of Illinois, Ill. Rev. Stat. 1975, Ch. 122, § 34-84, and that the practices and procedures employed by the Board violated the due process and equal protection provisions of the Fourteenth Amendment of the United States Constitution and Section 2 of Article I of the Constitution of Illinois of 1970. The petitioners also sought an order directing that all appointments to the position of principal be made in rank order from eligibility lists prepared by the Board of Examiners. (C-8, 9.)

Petitioners Maiter, Asllani, Bechina, Goldrich, Heck, Jones, Karlin, Kremen, Makowski and Moderhock are persons whose names appeared on the 1970 eligibility list for principal in the Chicago Public Schools.

Petitioners Baker, Barth, Brazier, Bernero, Bessler, Delaney, Dwy, Evan and Edington are persons whose names appeared on the 1974 eligibility list for the position of principal.

Petitioners Dolnick, Ahern, Altshuler, Anderson, Asher, Bailey, Becvar, Beifuss, Berg and Berndt are persons who had already been appointed to the position of principal.

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[1] The Respondents, Chicago Board of Education and the General Superintendent of Schools, will hereinafter be referred to collectively as "the Board". The remaining Respondents, District #21 Parent Education Council, Gwendolyn Cosby, Iona Bell, Midwest Community Council, Nancy Jefferson, William K. Sullivan School P.T.A., Frances Garcia, Pilsen Neighbors Community Council, Raquel Guerrero, Northwest Community Organization, Lake View Schools Coalition, Nancy Rodinski, Joan Arai Middle School Parents' Council, Laura Grace and Penny Kajiwara, will hereinafter be referred to collectively as "intervenors".

The suit was precipitated by an action of the Board whereby it changed the procedures employed in the promotion of persons to the position of principal, totally eliminating rank order appointments. There was no change in the statutes although the change in the Board's procedures changed practices of the Board which had been in existence for more than 53 years, since the enactment of Sections 34-83 and 34-84 of the School Code of Illinois. Ill. Rev. Stat. 1975, Ch. 122, §§ 34-83 and 34-84.

Sections 34-83 and 34-84 were enacted in 1917 as part of the "Otis Law" in an effort to do away with the partisanship, favoritism and cronyism which had existed in the principal selection process. The Board at that time had unfettered discretion in making such appointments, and one Board member had "openly offered the district superintendencies to Board members for their friends". Herrick, "The Chicago Schools, a Social and Political History," (Sage Publications, 1971), p. 128. Sections 34-83 and 34-84 mandated that appointments and promotions of principals be made for merit only and established a Board of Examiners to examine all applicants and to prepare and establish all necessary eligibility lists. The examiners prepared an eligibility list in which rank on the list was predicated upon the scores which applicants received on the examinations. (C-23, 198.)

On March 25, 1970, the Board had adopted procedures calling for the involvement of "local communities" in the selection of principals. In implementing that procedure, the Board required ". . . that the number of principal candidates on the eligibility list, in order of rank on the list, equal to the number of principalship vacancies being considered be rotated among each school selection committee for consideration." (C-110) Thus, principals were still appointed in rank order, as they had been since 1917, the rank order being the determinant of which names were circulated among the community committees. (C-110.)

On October 14, 1970, without any change in the language of the enabling legislation, the Board abolished rank order appointments by adopting the following recommendation:

> "Rank on eligibility list should not be considered in presenting new principal candidates to school interviewing committees nor in the assignment of principals from the eligibility list. (Board Report 70-926-2, C-110.)"

Under the School Code, the Board of Examiners is the only official body established for determining the qualifications of candidates for principal, although the Board of Examiners is involved neither in establishing criteria to be applied by the local school councils, nor in selecting persons to serve on the nominating councils. (C-219.)

According to the deposition of the deputy superintendent, the eligibility lists from 1970 and 1974 were commingled and persons from either list could apply for appointment to a particular vacancy. Not all of the persons who apply are interviewed and it is the nominating committees and the District Superintendent who decide on which persons they will interview. (C-222-224.) Each nominating committee has a different way in which it decides whom to nominate and there are no particular criteria for how votes are to be taken. (C-225, 226.)

Since the inception of the nominating committees, principals have been appointed only with the approval of a nominating committee, except for three instances, in which there was no local school council, a school chose not to participate and a committee failed to make a selection within 5 months. (C-312.)

The plaintiffs, petitioners herein, alleged that appointments were made from the 1974 eligibility list before exhausting the 1970 list and that of 48 appointments made since January 2, 1975, only one had been appointed from the 1970 list, although 25 candidates were still on that list. (C-6.)

In addition, the petitioners alleged that the nominating committees used race as a criterion, resulting in discrimination against both black and white candidates for the position of principal. From the 1970 eligibility list, out of the first 70 appointments to schools with a student body that was more than 50 per cent black, 65 of the principals appointed were also black. Out of all of the appointments made from the 1970 eligibility list, in 20 schools where the population was white, not one black applicant was appointed principal. The complaint further alleged that, from the first 48 appointments from the 1974 eligibility list, not one white principal had been appointed to a predominantly black school and not one black had been appointed to a predominantly white school. The petitioners further alleged that making the appointments pursuant to the recommendations of the nominating committees fostered a clear pattern of segregation. (C-6-8.)

After discovery had been taken and documents produced, the petitioners herein filed a motion for summary judgment. While the motion was pending, the trial court granted leave to various groups and individuals to intervene and, on December 20, 1976, the trial court entered a judgment order which provides, in part, as follows (C-701.):

> "1. That appointment of a person to the position of principal is to be made on the basis of merit, as required by Ill. Rev. Stat. Ch. 122, § 34-84.
>
> "2. That rank order on the principals' eligibility examination need not be used by the Board as the sole criteria of merit in the appointment of principals to individual schools, provided however, that until a uniform system of community input is established appointments to (sic) principals shall be in rank order commencing with appointments in rank order from the oldest existing principal list (1970)."

Both the petitioners herein and the intervenors appealed, the petitioners appealing from that portion allowing the elimination of rank order appointments, and intervenors appealing

from that portion requiring rank order appointment "until a uniform system of community input is established". The intervenors subsequently withdrew their appeal.

On appeal, the Illinois Appellate Court, First Judicial District, reversed and remanded with directions to enter an order requiring both rank order appointment from the eligibility lists and exhaustion of the 1970 list before proceeding to any subsequent list. (77 Ill. App. 3d 389.)

The Board and the intervenors sought, and were granted, leave to appeal to the Illinois Supreme Court. While the appeal was pending in the Appellate Court, the Illinois School Code was amended to permit the utilization of local nominating committees in the appointment of principals. (Ill. Rev. Stat. 1979, Ch. 122, § 34-8.2.) Sections 34-83 and 34-84 of the School Code remained unchanged.

Finding that Section 34-8.2 was to be retroactively applied, the Illinois Supreme Court reversed the appellate court and affirmed the judgment of the circuit court, except insofar as it required appointments in rank order "until a uniform system of community input is established." (Slip. op. at p. 13.) The court below also found that the intervenors had a "recognizable right", although it did not define the nature of that right. (Slip op. at p. 4.) The court below did not define what effect, if any, the term "appropriate eligibility list" in Section 34-8.2 has on the petitioners' claim that the earlier eligibility list was to be exhausted. Nor did it consider the factual issue regarding the petitioners' claim that the procedures followed by the Board and the nominating committees are racially discriminatory.

The petitioners sought a rehearing in the Illinois Supreme Court and that petition was denied on November 26, 1980.

REASONS FOR GRANTING THE WRIT

I. THE REFUSAL OF THE COURT BELOW TO REMAND THE CAUSE TO THE TRIAL COURT DENIES THE PETITIONERS THEIR RIGHT TO BE HEARD ON THEIR CLAIM THAT THE BOARD'S PRACTICES IN APPOINTING PRINCIPALS PURSUANT TO THE RECOMMENDATIONS OF THE NOMINATING COMMITTEES HAVE A RACIALLY DISCRIMINATORY EFFECT, FOSTERING A CLEAR PATTERN OF SEGREGATION.

The lower court's failure to remand this case to the trial court for resolution of the remaining fact issues has effectively denied petitioners access to the courts for the purpose of proving, and seeking relief from, the alleged racially discriminatory practices of the Board. Having thus closed the door to the courts, the lower court has denied the petitioners their right to equal protection and due process of law.

The petitioners' complaint in the trial court focused on two aspects: (1) the absence of statutory authority for the Board's use of nominating committees and elimination of rank order appointment from the eligibility lists; and (2) the nominating committee's use of race as a criterion and the absence of other standards to structure their deliberations which has led to the racially discriminatory appointment of principals that fosters racial segregation.

The former question is one of interpretation of Illinois statutes and was the basis for the petitioners' motion for summary judgment in the trial court. Had the court agreed with the petitioners' contention, that the Board had no statutory authority to eliminate rank order appointment and make appointments on the basis of the recommendations of nominating committees, there would have been no need to consider the constitutional aspect of the petitioners' claim. Had the

petitioners' motion been denied, the case would have proceeded to the factual issues regarding the claim of discriminatory practices.

In a classic example of a Pyrrhic victory, the petitioners were granted their motion for summary judgment in an order which affirmed the rank order appointment procedure but nevertheless added a compromise provision which also allowed the use of nominating committees. In addition, although the trial court purported to rule in the petitioners' favor, it afforded them none of the affirmative relief they had sought.

The ambiguity in the trial court's order prompted an appeal by both the petitioners and the intervenors. Following the appellate court's ruling that the Board's actions exceeded its statutory authority and that the petitioners were entitled to relief, the intervenors and the Board appealed to the Illinois Supreme Court. That court reversed the appellate court and affirmed the trial court's order, but reversed the trial court's order with regard to rank order appointment.

The order of the Illinois Supreme Court was an ultimate denial of the petitioners' motion for summary judgment, yet, incredibly, that court refused to remand the cause to the trial court, although the remaining issues were emphatically reiterated in the petition for rehearing.

This Court has recognized that the allocation of a school system's faculty and staff according to racial criteria violates the Constitution. In *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U. S. 7, at 19, 91 S. Ct. 1267, at 1277 (1971) the Court stated:

> "Independent of student assignment, where it is possible to identify a 'white school' or a 'Negro school' simply by reference to the racial composition of teachers and staff . . . a *prima facie* case of violation of substantive constitutional rights under the Equal Protection Clause is shown."

Indeed, this Court has expressed its belief that policies regarding faculty and staff are "among the most important indicia of a segregated system". *Swann,* 402 U. S., at 19, 91 S. Ct., at 1277, citing *Green* v. *County School Board of New Kent County, Virginia,* 391 U. S. 430, 435, 88 S. Ct. 1689, 1693 (1968).

The basic difference between *Swann* and *Green* and the instant case is that the petitioners have been denied the opportunity to prove their allegations of racial discrimination in the selection of principals in the Chicago Public Schools. The opportunity to be heard is a fundamental requirement of due process. *Grannis* v. *Ordean,* 234 U. S. 385, 394, 34 S. Ct. 779, 783 (1914). Furthermore, as this Court stated in *Cincinnati Street R. Co.* v. *Snell,* 193 U. S. 30, 36-37, 24 S. Ct. 319, 321 (1904):

> "It is not . . . the mere tribunal into which a person is authorized to proceed by a State which determines whether the equal protection of the law has been afforded, but whether in the tribunals which the State has provided equal laws prevail."

Equal laws have not prevailed in this case, nor have the Illinois courts allowed the petitioners the opportunity to be heard. If the Board were to use race as a criterion in appointing principals, its actions would clearly be violative of the Constitution. By refusing petitioners the opportunity to prove their allegations, the Illinois Supreme Court has allowed the Board to continue its practice of accepting the recommendations of nominating committees, recommendations based on race, and thereby has allowed the Board to do indirectly what the Constitution bars it from doing directly.

The claims of racial discrimination resulting from the Board's appointing principals according to the recommendations of local nominating committees, each with a different way of arriving at its conclusion, have never been resolved. Had the petitioners not moved for summary judgment, those claims would have been heard. Had the trial court denied summary

judgment, those claims would have been heard. That the petitioners should be barred from being heard on those claims, simply because the highest court of the State of Illinois refused to consider the case in its entirety and frame its judgment accordingly, clearly denies the petitioners of due process and equal protection, and needs the intervention of this Honorable Court.

II. THE RETROACTIVE APPLICATION OF SECTION 34-8.2 OF THE ILLINOIS SCHOOL CODE DENIED PETITIONERS OF A PROPERTY INTEREST WITHOUT DUE PROCESS OF LAW.

The court below held that the addition of Section 34-8.2 to the School Code abolished the rank order appointment requirement and also allowed the appointment of persons from later eligibility lists without requiring exhaustion of the earlier ones. Furthermore, the court below held that Section 34-8.2 was to be retroactively applied, because the possession of a valid certificate pursuant to examination by the Board of Examiners does not constitute an entitlement to a principalship. Petitioners submit that an entitlement does exist and is therefore subject to the protection of the Fourteenth Amendment.

The Illinois Supreme Court found that it was merely considering the procedure of appointing principals and that "there exists no vested right in any particular mode of procedure." (Slip. op. at p. 11.) However, that court's finding is not dispositive of the question, for it is federal constitutional law which determines whether an interest is a legitimate claim or entitlement. *Board of Regents of State Colleges* v. *Roth,* 408 U. S. 564, at 577, 92 S. Ct. 2701, at 2705 (1972); *Perry* v. *Sindermann,* 408 U. S. 593, at 602, 92 S. Ct. 2694, at 2700, 33 L. Ed. 2d 570 (1972).

In *Roth,* 408 U. S. at 577, 92 S. Ct. at 2709, this Court stated:

> ". . . to have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. . . .
>
> "Property interests . . . are created and their dimensions defined from existing rules or understandings that stem from an independent source such as state law. . . ."

Applying these principles in *Perry,* this Court held that, notwithstanding the absence of a contractual tenure provision, a professor whose contract was not renewed was entitled to the protection of procedural due process based on allegations that the policies and practices of the college constituted a *de facto* tenure system.

As in *Perry* v. *Sindermann,* the Illinois statutes and the practices of the Board since 1917 created a property interest in appointment to the position of principal. That interest is clearly defined and stems from Sections 34-83 and 34-84, their legislative history and the Board's consistent application for more than 53 years.

Prior to 1917 the Board of Education enjoyed unfettered power to hire and fire educational employees. It established the criteria for eligibility for appointment and it enjoyed the absolute right to decline to employ or reemploy any applicant for any reason or for no reason at all. *Fursam* v. *City of Chicago,* 278 Ill. 318 (1917).

At that time, partisanship and cronyism were rampant. On September 1, 1915, Board member Jacob Loeb sponsored the regulation upheld by the Court in *Fursam* which forbade "membership by teachers in organizations affiliated with a trade union, or a federation or association of trade unions, as

well as teacher organizations which have officers, business agents or other representatives who are not members of the Board." Herrick, "The Chicago Schools, a Social and Political History," (Sage Publication, 1971), p. 122. On June 27, 1916, the date set for Board action on determining which teachers would be hired for the following year, sixty-eight teachers failed to be rehired. These included three district superintendents, four of the six elected teacher pension trustees, all of the officers of the Chicago Teachers Federation, and Federation delegates to the Chicago and Illinois State Federations of Labor. Every one of those teachers had superior, excellent, or good ratings or were Federation members who had been promoted to be principal or District Superintendent. Herrick, "The Chicago Schools, a Social and Political History," (Sage Publications, 1971), p. 128. It was noted that "Loeb openly offered the district superintendencies to Board members for their friends." *Id.*, p. 128. It was in this context that the Illinois legislature considered the Otis Law, which added what are now Sections 34-83 and 34-84 of the School Code.

When the legislature approved the language of Section 34-84 which requires that "appointments and promotions of teachers, principals, and other educational employees shall be made for merit only . . . " it was seeking to do away with the evils of partisanship, favoritism and cronyism which were then inherent in the selection process. Only through competitive examinations which were open to everyone and where obtaining the position was measured by success on the examination and not by success with a Board member could this situation be remedied.

The legislature knew what the term "merit appointment" meant. The meaning of the phrase had been the subject of litigation in this jurisdiction as well as other jurisdictions. *Rogers* v. *Common Council of Buffalo, et al.*, 123 N. Y. 173 (1890); *People ex rel. Akin* v. *Kipley*, 171 Ill. 44, 49 N. E. 229, 41 L. R. A. 775 (1898). "Merit appointment" meant, and means, rank order appointments from eligibility lists prepared by the Board of Examiners.

The Board also knew what was meant by "merit appointment." From the passage of the Otis Law in 1917 until the Board decided to defer to local groups in the appointment of principals in late 1970, it made appointments to the position of principal in rank order, exhausting eligibility lists in chronological order. The change made in 1970 was made without any change in any statutes and it was not until 1977 that the Board was given the authority in Section 34-8.2 to appoint nominating committees. Nevertheless, the mandatory provisions of Sections 34-83 and 34-84 remained unchanged.

Under these circumstances, the petitioners were entitled to be appointed to the position of principal, in order of their rank on the eligibility lists as vacancies arose. The Board had recognized this in its earliest use of nominating committees, circulating names in rank order for consideration by the committees. (C-110.)

The petitioners had every reason, indeed, they had the right, to expect appointment according to the long-established procedures. The Board unilaterally decided otherwise, without statutory authority. The Illinois courts have now ruled that rank order appointment has been retroactively obliterated by the enactment of Section 34-8.2, although the legislature made no such specific statements and never so much as referred to Sections 34-83 and 34-84 in considering Section 34-8.2.

It is the nature of the interest at stake which determines the existence of a protectable right. *Roth,* 408 U. S. at 570-571, 92 S. Ct. at 2705. The nature of the interest here is not a mere procedure, but the entitlement to positions that the Board, by its practice of more than 53 years, had led petitioners to believe would be allotted to them in order of their rank on the eligibility lists. Under the rulings of *Perry* and *Roth,* the petitioners have raised a valid claim of a protectable property right, a claim which arises from the Fourteenth Amendment and should therefore be considered by this Court.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Illinois.

Respectfully submitted,

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APPENDIX

Docket Nos. 52787, 52788 cons.—Agenda 61—May 1980.
IRIS M. MAITER *et al.*, Appellees, v. CHICAGO BOARD OF EDUCATION *et al.*, Appellants.

MR. JUSTICE RYAN delivered the opinion of the court:

The plaintiffs, principals in the Chicago public school system and individuals on the 1970 and 1974 eligibility lists for principal, as determined by the board of examiners (Ill. Rev. Stat. 1977, ch. 122, par. 34—83), filed a complaint against the defendant Chicago board of education (the board of education) on June 12, 1975. The trial trial court permitted certain interest groups and individuals to intervene as defendants. The nature of the interests of the intervenors is discussed later. The selection of the principals for the Chicago public school system is governed by section 34—84 of the School Code (Ill. Rev. Stat. 1977, ch. 122, par. 34—84), which provides that principals are to be selected "for merit only." The plaintiffs contend this requires appointment by "rank order" as determined by the score assigned the prospective principal candidates by the board of examiners. Starting in 1970, the board of education adopted procedures establishing "nominating committees of local school councils" in order to involve local communities in the selection of school principals. The committees were established without any statutory authority, and "rank order" was no longer the sole criteria used to select principals. On December 20, 1976, pursuant to the plaintiffs' motion for summary judgment, the trial court entered a judgment order requiring that all principals be selected by "rank order" until such time as the board of education adopted "a uniform system of community input." The trial court order also provided that rank order need not be the sole criteria of merit. On September 28, 1976, the trial court entered an additional order permitting members of community organizations and school parents councils to intervene. The appellate court reversed the circuit court's order providing that rank order need not be used by the board of education as the sole criteria of merit, and it remanded with

directions that the board of education make appointments to the position of principal in rank order from eligibility lists prepared by the board of examiners. (77 Ill. App. 3d 389.) We granted leave to appeal.

Prior to 1917, the Chicago board of education had plenary power to determine the character and fitness of applicants for appointment as principals of the various schools. As the trial court stated, the so-called Otis Law was passed in 1917 in order to do away with favoritism, partisanship, and cronyism in the selection of principals. The Otis Law provided in part that "[a]ppointments and promotions of teachers, principals and other educational employees shall be made for merit only ***." (Ill. Rev. Stat. 1975, ch. 122, par. 34-84.) Also, a board of examiners was created to examine all applicants and to prepare and establish all necessary eligibility lists. (Ill Rev. Stat. 1975, ch. 122, par. 34-83.) From 1917 until 1970, the board of education made appointments of principals and teachers in "rank order" from an eligibility list compiled pursuant to examinations given by the board of examiners.

On March 25, 1970, the board of education adopted procedures calling for the involvement of local communities in the selection of principals and established nominating committees of local school councils. Pursuant to these procedures, the committees were first only given the names of present principals who desired to transfer to the schools where there were vacancies. If all potential transferring principals were rejected by a committee, it was given a second list of candidates from the eligibility list in rank order. The committees rated the candidates in order of preference, and the board of education attempted to honor the requests. On October 14, 1970, the board of education adopted procedures whereby the rank on the eligibility list would not be considered either in presenting candidates to the nominating committees or in the assignment of principals.

This suit was filed on June 12, 1975. The plaintiffs argued that fitness to be a principal is to be determined by the board of examiners and that the board of education has purely a ministerial duty in selecting principals in rank order from the eligibility list compiled by the board of examiners. The plaintiffs sought a declaratory judgment that the rules and procedures establishing the local nominating committees were in violation of the School Code, the fourteenth amendment of the United States Constitution, and section 2 of article I of the Illinois Constitution. Pursuant to plaintiffs' motion for summary judgment, the trial court entered its judgment order on December 20, 1976. The order reviewed the history of the applicable statutes and found that rank-order appointment of principals was abhorrent because it precluded community input. However, the trial court ordered that principals were to be selected by rank order until such time as the board of education was able to establish a uniform system of community input. The court stated:

> "2. That rank order on the principals' eligibility examination need not be used by the Board as the sole criteria of merit in the appointment of principals to individual schools, provided however, that until a uniform system of community input is established appointments to principals shall be in rank order commencing with appointments in rank order from the oldest existing principal list (1970)."

The intervenors appealed from that portion of the order requiring the board of education to appoint principals in rank order until such time as a uniform system of community input was established. On April 13, 1977, the board of education, in an attempt to comply with the trial court's order, adopted Board Report 77—156—46, which established uniform procedures for community participation in the principal-selection process. The intervenors' appeal was dismissed by the appellate court because of mootness.

The plaintiffs appealed from the portion of the trial court's order providing that "rank order" need not be the sole criteria of merit in the appointment of principals, and from the order of September 28, 1976, permitting the members of community organizations and school parents councils to intervene. Before this case was heard by the appellate court, the Illinois legislature added section 34—8.2 to the School Code for cities of over 500,000 inhabitants. (Ill. Rev. Stat. 1979, ch. 122, par. 34—8.2.) This provision specifically provides for the use of local nominating committees in the selection of principals and is set out and considered later in this opinion. Section 34—84 of the Code, requiring appointment "for merit only," remained unchanged. The appellate court held that section 34—8.2 of the School Code did not repeal or amend the requirement of rank-order appointment as contained in section 34—84, and that it was possible for local nominating committees to coexist with a system of rank-order selection.

The first issue presented for review is whether the trial court erred in permitting members of community organizations, school parents councils and individual school parents to intervene in this suit. The intervention statute (Ill. Rev. Stat. 1975, ch. 110, par. 26.1) provided that anyone shall be permitted as of right to intervene whenever the representation of his interests by existing parties may be inadequate and he may be bound by any judgment, decree or order entered in the action. It also permits intervention in the discretion of the trial court. Here, the trial court permitted the groups and parents to intervene pursuant to section 26.1(2)(b) of the Civil Practice Act, which provides:

> "Upon timely application anyone may in the discretion of the court be permitted to intervene in an action *** (b) when an applicant's claim or defense and the main action have a question of law or fact in common." (Ill. Rev. Stat. 1975, ch. 110, par. 26.1(2)(b).)

Section 26.1 has been liberally construed (*Bredberg* v. *City of Wheaton* (1962), 24 Ill. 2d 612, 623; *Dowsett* v. *City of East Moline* (1956), 8 Ill. 2d 560, 567) and is modeled after Rule 24(b) of the Federal Rules of Civil Procedure, so that the interpretation of Rule 24 is highly relevant. See *Cooper* v. *Hinrichs* (1957), 10 Ill. 2d 269, 277; *Dowsett* v. *City of East Moline* (1956), 8 Ill. 2d 560, 567; Ill. Ann. Stat., ch. 110, par. 26.1, Historical and Practice Notes, at 318 (Smith-Hurd 1968).

Permissive intervention, by definition, lies in the sound discretion of the trial court, and its judgment will not be reversed unless a clear abuse of discretion is shown. Under the intervention statute, a direct interest in the suit need not be shown (*Mensik* v. *Smith* (1960), 18 Ill. 2d 572, 590), but the applicant must have an enforceable or recognizable right and more than a general interest in the subject matter. *Cooper* v. *Hinrichs* (1957), 10 Ill. 2d 269, 277.

The facts show that the trial court acted within its discretion in permitting intervention because the intervenors have a recognizable right to participate in the selection of principals in Chicago through the use of local nominating committees. At the time the trial court allowed intervention, the authorization for nominating committees was found only in action of the board of education. Such authorization is now found, however, in the School Code. Section 34—8.2 of the School Code permits the Chicago board of education to use local nominating committees to screen applicants for the job of principal in local schools. Several of the individual intervenors have been members of principal-nominating committees, and several members of organizational intervenors have participated in selecting principal-nominating committees. It has been held that an organization has standing to assert the concerns of its constituents. (*NAACP* v. *Alabama* (1958), 357 U.S. 449, 2 L. Ed. 2d 1488, 78 S. Ct. 1163.) Also, the individual intervenors and the members of the organizational intervenors are parents of children in the Chicago public schools. As parents, they have a special interest in the litigation. Section 34—8.2 requires at

least 60% of the members of local nominating committees to be "parents or guardians of children in the affected school." (Ill. Rev. Stat. 1979, ch. 122, par. 34—8.2(C).) Thus, the intervenors have a vital interest in the outcome of this litigation and in the method of selecting principals for their schools. Their right to participate as members of the nominating committees or to have local nominating committees participate in the process of selecting principals will be affected by this litigation. The intervenors have more than a "mere interest" in the general subject matter of the litigation. Their interests will be adversely affected if plaintiffs prevail. The trial court did not abuse its discretion in allowing the petition to intervene.

The issue raised by the merits of this appeal concerns the construction to be given the provision contained in section 34—84 of the School Code (Ill. Rev. Stat. 1977, ch. 122, par. 34—84) requiring that appointments be made "for merit only." The Chicago board of education and the intervenors challenge the appellate court's decision that merit appointment of principals requires that the board of education appoint principals according to their position of rank order on the eligibility list prepared by the board of examiners. They contend that the legislature granted the board of education the exclusive power to make appointments and promotions within its discretion. (See Ill. Rev. Stat. 1977, ch. 122, par. 34—8.) Requiring the board of education to make rank-order appointments pursuant to the board of examiner's eligibility list would, according to the board of education and the intervenors, constitute usurpation of the board of education's power to appoint.

In support of this argument, they maintain that the legislative scheme of the School Code evinces the legislative intent that the board of education have the authority to exercise broad discretion in its exclusive power to appoint principals. Specifically, they argue that the failure of the General Assembly to enact House Bill 1067 in the 79th General Assembly, the rejection of House Bill 516 in the 80th General Assembly, and

the enactment of section 34—8.2 reflect the legislature's affirmation of this permissibly broad power. The plaintiff-principals counter with the contention that section 34—8.2 neither repealed nor modified the rank-order requirement of section 34—84 and that the failure of the legislature to act favorably on a proposed bill can be of no consequence in legislative interpretation.

House Bill 1067 was introduced in the 79th General Assembly to amend section 34—84 of the School Code to define the term "for merit only" as requiring that principals or teachers be appointed in order of their standing on the eligibility list. The bill was tabled on June 25, 1975, in the House Elementary and Secondary Education Committee. The bill was reintroduced in the 80th session of the Illinois General Assembly as House Bill 516 and, on April 29, 1977, was again tabled in the Elementary and Secondary Education Committee. Prior to the rejection of House Bill 516, House Bill 1742 was approved as Public Act 80—879, effective October 1, 1977. (Ill. Rev. Stat. 1977, ch. 122, par. 34—8.2.) Under section 34—8.2, the board of education is legislatively authorized to impanel local nominating committees and have such committees consider, interview and nominate persons on the eligibility lists and principals who consent to be considered for a transfer. Section 34—8.2 provides:

> "A. Before the general superintendent shall recommend or the board shall vote on the appointment of a principal, the general superintendent and board may obtain the nomination of a person or persons to fill the position of principal by a local nominating committee.
>
> B. A local nominating committee, when authorized by board rules and regulations, may consider, interview and nominate only those persons for the position of principal who appear on the appropriate eligibility list prepared by the board of examiners or those principals who consent to be considered for a transfer. The recommendations of the local nominating committee shall not discriminate against any person based upon race, color, creed, national ancestry, sex, ethnic heritage or religious beliefs.

> C. The Board may adopt rules and regulations regarding the formation of and procedures to be followed by local nominating committees; these rules and regulations shall assure that at least 60% of the members of each committee shall be parents or guardians of children in the affected school." (Ill. Rev. Stat. 1977, ch. 122, par. 34—8.2.)

The relevant legislative activity is thus summarized as follows: (1) House Bill 1067 requiring rank-order appointment of principals was not adopted in the 79th General Assembly in 1975; (2) section 34—8.2 was enacted in 1977 and; (3) House Bill 516 requiring rank-order appointment was rejected in 1977. For the reasons enumerated herein, we agree that this legislative activity and the discussion of these bills in committee reflects the intent of the General Assembly that the board of education have the authority to exercise broad discretion in the appointment of principals and not be limited to rank-order appointment.

We note initially that the failure of a committee to act favorably on a proposed bill should not be relied upon, in the absence of an indication as to the reason for the failure, to ascertain legislative intent. (*Order of Railway Conductors of America v. Swan* (1947), 329 U.S. 520, 529, 91 L. Ed. 471, 478, 67 S. Ct. 405, 410.) Thus, the failure of the House Elementary and Secondary Education Committee to act favorably on House Bills 1067 and 516, in and of itself, can be of no aid in construing section 34—8.2. However, legislative committee hearings conducted on proposed bills are matters of public record. These hearings include statements by the proponents of the rejected bills as to their purpose as well as by opponents as to the reason for their opposition. The hearings also include statements by the proponents of House Bill 1742 (now section 34—8.2 of the School Code). In a previous opinion, we have recognized that public statements made by those who are in a

position to clarify legislative meaning carry weight and are helpful to this court. (*Client Follow-Up Co. v. Hynes* (1979), 75 Ill. 2d 208, 226; see 2A Sutherland, Statutes & Statutory Construction sec. 48.10, at 209-10 (4th ed. 1973).) We find that the statements made during the legislative committee hearing on these bills are helpful in our determination of legislative intent insofar as they reflect the conflict between the rejected bills and House Bill 1742 (section 34—8.2).

The timing of the introduction of these bills as they relate to this litigation is also worthy of consideration. The complaint in this case was filed on June 12, 1975. House Bill 1067, which would have defined "for merit only" as used in section 34—84 of the School Code as requiring that appointments be made in order of standing on the eligibility list, was introduced in the House of Representatives on March 26, 1975. The bill was tabled on June 25, 1975. The trial court entered its order holding that rank order on the eligibility list need not be the sole criteria in the appointment of principals on December 20, 1976. Thereafter House Bill 1742 (now section 34—8.2) was introduced, as was House Bill 516 (again defining "for merit only" as requiring appointments of principals to be made in order of rank on the eligibility list). House Bill 1742 was reported favorably out of committee. A few days later the same committee considered House Bill 516. It is plain from the comments made during the committee hearings that these bills were inspired by and were in response to this litigation and the December 20, 1976, order of the circuit court of Cook County in this case.

Ronald Cope, who represents plaintiffs in this case, testified before the Elementary and Secondary Education Committee in favor of House Bill 516. In opposition to the adoption of the bill, Representative Madison stated:

> "I would like to call to the committee's attention the fact that just last week we voted on House Bill 1742. And we voted that bill out of here on a vote of 17 to 3 and that bill in essence gave the Chicago School Board the authority to

> allow local nominating committees to get involved in principal selection. *** This particular bill if passed by the committee would completely contravene the *** effects upon 1742 because it defines for merit only as an order of standing and at the present time for merit takes into consideration several factors including the community's standing on the principal selection."

Dr. Arthur Lehne, assistant superintendent of the Chicago board of education, also testified in opposition to House Bill 516. He agreed with Representative Madison that House Bill 516 "would negate 1742." Representative Levin, who had been a sponsor of House Bill 1742, advocated the advisory role of the community in the selection of principals as provided in the newly adopted House Bill 1742:

> "[T]he ultimate decision under our bill is still with the Board of Education. We are just talking about an advisory role, so that the community could have some role (unintelligible) in those schools where parents and community are most involved you get the best quality education. So it would be very hard in those schools where there is hostility between the principal and the community to really have a good operation going on."

The above statements concerning House Bill 516 indicate that the provision of that bill defining "for merit only" as rank-order appointment was viewed as being in direct opposition to the newly enacted bill authorizing the board's creation of local nominating committees. An examination of the legislative floor debates preceding the enactment of House Bill 1742 supports this conclusion. According to Representative Levin, the underlying purpose of the bill was to clarify the power of the board of education to create community advisory committees. He stated:

> "[T]his Bill was introduced because there was litigation pending * * * in which the Circuit Court of Cook County * * * confused the issue as to whether or not the board had the authority to have these advisory council[s]. This is meant to clarify the legal authority." (House Debates on House Bill 1742, June 26, 1977, at 72.)

This discussion refers to the order entered by the circuit court in this case. Thus, according to Representative Levin, House Bill 1742 would affirm the power of the board of education to appoint local nominating committees to assist the board in the determination of meritorious candidates for principalships. Representative Gaines spoke of the value of community input in the selection of principals:

> "[The amendment] is very much needed to take away from the Board of Education their excuse for not listening to community participation. This is the only district where the board members are not elected. And the only opportunity that the community has to have their expressions of interest heard is through these groups. *** Only when you have this kind of community participation, can you have good quality education." House Debates on House Bill 1742, June 26, 1977, at 76.

We conclude that the legislative history of House Bill 1742 of the 80th General Assembly (section 34-8.2), House Bill 1067 of the 79th General Assembly, and House Bill 516 of the 80th General Assembly, as well as the clear language of House Bill 1742, clearly indicate that the legislature intended that the board of education not be bound by the candidates' standing on the board of examiners' eligibility list in appointing persons to serve as principals.

The legislature would not have granted the board of education the authority to create local nominating committees if those groups were to have no input in the appointment process. If the board were to be confined to the eligibility list, any recommendation by the local committee would be without weight. Thus the statute authorizing the creation of the community committees would be meaningless. This court will not assume that the legislature engaged in a meaningless act. (*Lopez* v. *Fitzgerald* (1979), 76 Ill. 2d 107, 117; *Pinkstaff* v. *Pennsylvania R.R. Co.* (1964), 31 Ill. 2d 518, 524.) Thus, the presumption is that "the lawmaker has a definite purpose in

every enactment and has adapted and formulated the subsidiary provisions in harmony with that purpose ***." (2A Sutherland, Statutes and Statutory Construction sec. 46.05, at 57 (4th ed. 1973).) The existence of community input is clearly inconsistent with an interpretation of a rank-order-of-appointment requirement. The sections of the School Code are *in pari materia,* and they must be construed with reference to one another in order to give harmonious meaning to the act as a whole. (See, *e.g., Galvin* v. *Galvin* (1978), 72 Ill. 2d 113, 118.) We therefore do not construe the requirement of section 34-84 that principals be appointed "for merit only" to mean that the board of education make such appointments pursuant to the order of rank appearing on the eligibility list prepared by the board of examiners. Instead, in conjunction with section 34-8.2, we construe the merit requirement as permitting the board of education discretion in its duty to appoint, which discretion may include the creation of community groups to participate in the appointment procedure. Under section 34-8.2, the local nominating committees may nominate for the consideration of the board of education any person whose name appears on the board of examiners' eligibility list.

The appellate court used the rule of contemporaneous construction in its analysis of the term "for merit only." We do not find that rule of construction to be applicable here. We have determined herein that the definition of that term pursuant to section 34—8.2 does not include a requirement that the board of education appoint principals by rank order. We need not ascertain, however, the meaning of that term prior to the adoption of section 34—8.2. Although the statute did not become effective until September 1, 1977, we hold, for reasons stated below, that provision and our interpretation thereof to be controlling in this case.

In absence of express language declaring otherwise, an amendatory act is ordinarily construed as being prospective in its operation. (*Wilson-Raymond Constructors Co.* v. *Industrial*

Com. (1980), 79 Ill. 2d 45, 54-55; *General Motors Corp.* v. *Industrial Com.* (1975), 62 Ill. 2d 106, 111; *People ex rel. American Federation of State Employees* v. *Walker* (1975), 61 Ill. 2d 112, 118; *People ex rel. Baylor* v. *Bell Mutual Casualty Co.* (1973), 54 Ill. 2d 433, 440; *New York Life Insurance Co.* v. *Murphy* (1944), 388 Ill. 316, 324.) This general rule is based upon the principle that the legislature may not impair the obligation of contracts (*A.S.S. Wrecking Co.* v. *Guaranty Bank & Trust Co.* (1972), 53 Ill. 2d 249, 253-54) or interfere with vested substantive rights. (*Hogan* v. *Bleeker* (1963), 29 Ill. 2d 181.) However, in the absence of a saving clause, an amendatory act may be retroactively applied where the legislature so intended and where the statute affects the remedy or matters of procedure. When a change of law merely affects the remedy or law of procedure, all rights of action will be enforceable under the new procedure, without regard to whether they accrued before or after such change of law and without regard to whether or not the action has been instituted, unless there is a saving clause as to existing litigation. (34 Ill. L. & Prac. *Statutes* secs. 194, 195, at 156-57 (1958).) (See also *Orlicki* v. *McCarthy* (1954), 4 Ill. 2d 342; *Dworak* v. *Tempel* (1959), 17 Ill. 2d 181, 187; *Steinberg* v. *Chicago Medical School* (1977), 69 Ill. 2d 320, 337; *Grigsby* v. *Industrial Com.* (1979), 76 Ill. 2d 528, 532.) (See generally 1A Sutherland, Statutes and Statutory Construction sec. 22.36, at 200 (4th ed. 1972); 82 C.J.S. *Statutes* sec. 432, at 1006-07 (1953).) Changes in procedure or existing remedies will not be applied retrospectively, however, where a vested, constitutionally protected right will be deprived by such application. *Hogan* v. *Bleeker* (1963), 29 Ill. 2d 181, 187.

With the above principles in mind, we find the 1977 amendment to the School Code to be controlling in this case and, therefore, applicable to the pending applications for the principal positions. There exists no vested right in any particular mode of procedure. (*Winter v. Barrett* (1933), 352 Ill. 441, 466: see 73 Am. Jr. 2d *Statutes* sec. 388, at 507 (1974); 16A

Am. Jur. 2d *Constitutional Law* sec. 675, at 661 (1979).) Furthermore, we do not deem there to be a property right inherent in holding a public office; that is, the persons whose names appear on the eligibility list have no vested right in a principalship. Although we are not bound by the Federal courts' decisions, we are in agreement with the Seventh Circuit's conclusion that a candidate possessing a valid certificate from the board of examiners does not have an entitlement to a principalship. (*Webster v. Redmond* (7th Cir. 1979), 599 F.2d 793.) The amendment may, therefore, be retroactively applied.

Finally, the plaintiffs assert that the term "for merit only" has, at all times, required rank-order appointment and that section 34—8.2 neither amended nor modified the School Code's rank-order requirement. As stated above, section 34—8.2 concerns the procedural aspect of a nonvested right and is therefore to be retrospective in its application. Thus, we need not decide whether the law prior to the addition of section 34—8.2 mandated appointment by rank order on the eligibility list. However, even if the prior law did require appointment of principals by rank order, we would find section 34—8.2 to have amended, by implication, this requirement.

An implied amendment is an act which purports to be independent of, but which in substance actually modifies or adds to a prior act. (1A Sutherland, Statutes and Statutory Construction sec. 22.13, at 139 (4th ed. 1972).) The implied amendment arises out of the inconsistency or repugnancy between the two acts. (*People ex rel. Coffman v. Illinois Central R.R. Co.* (1924), 314 Ill. 339, 342.) This court has stated on more than one occasion that although implied amendments are not favored, they are not constitutionally prohibited. (*People ex rel. Nordstrom v. Chicago & North Western Ry. Co.* (1959), 16 Ill. 2d 264, 268; *Jordan v. Metropolitan Sanitary District* (1958), 15 Ill. 2d 369, 378; *Starck v. Chicago & North Western Ry. Co.* (1955), 4 Ill. 2d 611, 617.) We have previously identified the inconsistency

between a rank-order appointment requirement and a procedure utilizing community input through local nominating committees. Thus, if rank-order appointment was indeed mandated prior to October 1, 1977, such a procedure would be amended by implication by the enactment of section 34—8.2.

In conclusion, we hold that the requirement under the School Code that principals be appointed "for merit only" does not mandate that the board of education appoint persons to serve as principals solely according to the rank order of appearance on the eligibility list prepared by the board of examiners. The legislative scheme evinces an intent that the board of education have great discretion in such appointments. This intent is aptly reflected in section 34—8.2, which is to be retroactively applied.

The judgment of the appellate court is reversed, and the judgment of the circuit court is affirmed, except insofar as it required appointments in rank order "until a uniform system of community input is established."

Appellate court reversed; circuit court affirmed in part and reversed in part.